IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 158 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHEHENAZ AYUABBHAI JUNEJA

Versus

STATE OF GUJARAT

Appearance:

MR SP HASURKAR for Petitioner

MR DP JOSHI, PUBLIC PROSECUTOR for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 21/06/2001

ORAL JUDGEMENT

#. This revision is directed against the order of the Additional Sessions Judge, Vadodara passed on 11-4-2001 directing the case property, which was seized by the police in connection with registration of an offence

under sec.406 of the Indian Penal Code, to be handed over to Dr.Ayubbhai Juneja, the husband of the complainant Shehenaz Ayubbhai Juneja.

#. Respondent no.2 is served, but he has not put in appearance, nor has engaged any counsel. As such, Shri SP Hasurkar, learned counsel for the revisionist and Shri DP Joshi, learned APP for respondent no.1 have been heard.

#. It appears from the impugned order that on account of matrimonial dispute between the husband and wife that ultimately a criminal complaint under sec.406 of the Indian Penal Code had to be filed. The Chief Judicial Magistrate ordered inquiry under sec.156(3) of the Code of Criminal Procedure. In the course of enquiry, certain articles were seized by the police from the matrimonial home of the wife, namely, from the house of her husband. Both the parties claimed possession of the case property. It was evidently claimed under sec.451 of the Code of Criminal Procedure. The matter was heard and considered at length by the Chief Judicial Magistrate, Vadodara, who rejected the application of the husband and allowed the application of the wife.

#. Feeling aggrieved, the husband preferred revision. The revisional Court set aside the order of the Chief Judicial Magistrate, Vadodara, rejected the application of the wife claiming possession of case property and allowed the application of the husband for possession of the case property imposing certain conditions. It is against this order that the instant revision has been filed.

#. It appears from the impugned order of the Additional Sessions Judge that he was totally misguided and he overlooked the provisions of sec.451 of the Code of Criminal Procedure. In directing custody of case property during pendency of investigation and trial, neither the Magistrate nor the Sessions Judge was required to consider the ownership or title in the case property. The order for delivery of possession of case property could be passed in favour of a person who was found entitled for possession of the property by the courts below.

#. The concept of "ownership" or concept of "stridhan property" enunciated by the two courts below in their orders is patently illegal and incorrect. It may be mentioned that the parties are Mohammedans and the concept of "stridhan" applies only under Hindu Law and not in Mohammedan Law. The two courts below were,

therefore, misguided that the concept of "stridhan" was to be taken into account. At the most, the list could be considered in this light, whether it presented "dahej" articles as understood under Mohammedan Law and not as "stridhan" property. "Dahej" articles consist of articles brought by the wife at the time of marriage from the house of her parents. It was unusual for the Additional Sessions Judge to expect that the list should have been prepared by the wife giving details of the persons presenting the gift, the name of the article, its value or price alongwith signature of the husband and the wife. The Additional Sessions Judge was completely in error in considering the provisions of sec.13(2) of the Dowry Prohibition Act for assailing the list and for disbelieving the same as mentioned above. He was simply to consider who was the person entitled to possession of the case property. No doubt, in the application, the wife gave a long list claiming the property to which she was entitled to possession. But, when the police raided the house of the husband, only 28 articles were recovered and in these articles, jewellery was found in the house of the husband. The items which were recovered by the police could not have easily been said to be belonging to the husband or that he was entitled to their possession simply because the articles were recovered from his house. Such petty items like utensils, fridge, television, etc. are given in "dahej" as "dahej" articles also. Secondly, the claim by the wife could not be rejected by the revisional Court. The trial Magistrate has considered all the aspects in proper perspective except that, he erred in considering the same to be "stridhan" property. The order of the Chief Judicial Magistrate in these circumstances was not liable to be disturbed or set aside by the revisional Court.

#. The theory of misappropriation or theft was also not to be considered by the revisional Court in such revision. The observation of the revisional Court that ordinarily the muddamal has to be returned to the person from whom the muddamal is taken or to the person other than from whom it was taken to another person who has presented the best title, is equally errorneous. Question of title is not to be adjudicated in such proceedings. Only question of possession is to be taken into consideration, and that too, in prima facie manner and not that the revisional Court should have insisted upon the wife to present receipt, nor he was justified in disbelieving the list submitted by the wife on the ground that it was subsequently prepared.

#. For the reasons stated above, the impugned order

can not be sustained. The revision, therefore, succeeds and is hereby allowed. The impugned order dated 11-4-2001 passed by the Additional Sessions Judge, Vadodara is hereby set aside.

#. Shri SP Hasurkar informs that in compliance of the impugned order of the Additional Sessions Judge, Vadodara, case property has been handed over to the husband. Since, the order of the Additional Sessions Judge is being set aside and the order of the Chief Judicial Magistrate is being restored, necessary compliance shall be made in accordance with the order of the Chief Judicial Magistrate, Vadodara.

June 21, 2001. (D.C. Srivastava, J.)

/sakkaf